

REMARKS

Reconsideration and withdrawal of the rejections set forth in the non-final Office Action dated April 10, 2009, are respectfully requested in view of this Response, accompanied by a petition for one-month Extension of Time. Claims 1-8, 10 and 11 are pending.

In the outstanding Office Action, the Examiner rejected claims 1-8 and 10-11 under 35 U.S.C. §103(a) as being unpatentable over European Patent Document EP 1 068 093 B1 to Brose Fahrzeugteile GmbH & Co. KG Coburg by Taubmann et al. (hereinafter referred to as “Taubmann et al.”) in view of the Examiner’s assertion that “[i]t is well known in the art to provide gussets, to add stability to elements as seen in” U.S. Patent No. 5,267,717 to Isomura (hereinafter referred to as “Isomura”), U.S. Patent No. 5,516,071 to Miyauchi (hereinafter referred to as “Miyauchi”), and U.S. Patent No. 5,259,257 to Mouri (hereinafter referred to as “Mouri”).

Interview Summary

Applicants thank the Examiner for the courtesies extended to Applicants’ Representatives in the Interview with the Examiner on October 5, 2009. Discussion items included an overview of Applicants’ claimed subject matter, and the shape and connections of the support relative to the spindle in view of the claim features “the at least one *support* has a *trough-shaped, outer bearing surface* on a solid *block-like* limb, *in which bearing surface* one end of *the spindle rests*” (emphases added, element numbers redacted) etc., in comparison and differentiation from the asserted “supports(s)” of the cited art of record. Applicants’ Representatives presented to the

Examiner an illustrative exhibit comparing and contrasting Applicants' claimed support (shown in photographic views similar to original figures 3-5) with the Examiner asserted supports of Taubmann et al. (shown by Examiner cited Fig. 15), Isomura (element 124, shown by Fig. 4), Miyauchi (element 13, shown by Fig. 1) and Mouri (element 13, shown by Fig. 1).

The Examiner favorably regarded the illustrative exhibit and discussion in clarifying the differences between Applicants' claimed subject matter and the cited art of record, and indicated that he was in agreement of the differences between the claimed subject matter and the asserted "support" of the cited Taubmann et al., Isomura, Miyauchi and Mouri references. The Examiner indicated that "the prior art failed to teach the trough," and that he "didn't see [it being] taught explicitly... the spindle being attached/welded to the trough." The Examiner requested that Applicants file a Response discussing these differences, particularly the "trough-shaped" feature.

Applicants' Representatives further reviewed independent claim 1 with the Examiner to confirm the relationships between the various features and elements with respect to the figures of the application, and to reinforce the discussion with respect to the slide. The Examiner again indicated that he agreed the claim recited a "trough-shaped" support that was not taught by the cited prior art.

Applicants thank the Examiner(s) for the Examiner's Interview Summary (prepared after consultation with Supervisory Patent Examiner Shriver) in which the Examiner indicated that "[t]he Applicants presented photographs of the claimed invention, pointing out the trough-shaped support, for holding the spindle. The Examiner agreed that the prior art failed to teach this limitation, and would withdraw the previous rejection of claim 1." Accordingly, in view of the

Interview and the Examiner's request, Applicants submit a discussion below of the differences between Applicants' claimed subject matter and the cited art of record.

Claim Rejections under 35 U.S.C. §103(a)

The Examiner rejected claims 1-8 and 10-11 under 35 U.S.C. §103(a) as being unpatentable over Taubmann et al. in view of the Examiner's assertion that "[i]t is well known in the art to provide gussets, to add stability to elements as seen in" Isomura, Miyauchi, and Mouri.

Response

Claims 1-8, 10 and 11 have been amended or depend upon amended claims and, as amended, the rejections thereto are respectfully traversed. Applicants traverse the rejections as all of the features of the presently claimed subject matter are not disclosed, taught or suggested by the cited prior art of record. To establish a *prima facie* case of obviousness, the Examiner must establish that the prior art references teach or suggest all of the claim features. *Amgen, Inc. v. Chugai Pharm. Co.*, 18, USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ2d 494, 496 (CCPA 1970).

A *prima facie* case of obviousness must also include a showing of the reasons why it would be obvious to modify the references to produce the present invention. *See Dystar Textilfarben GMBH v. C. H. Patrick*, 464 F.3d 1356 (Fed. Cir. 2006). The Examiner bears the initial burden to provide some convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings. *Id.* at 1366.

Overview

Independent claim 1 recites:

Drive for a seat adjusting device, in particular for motor vehicles, with spindle (5) which is affixed to a first rail (4) of two rails (3, 4) that are adjustable relative to one another, by means of at least one support (60) that is located on the end of the spindle (5), and with a gear mechanism (9) which is driven by a motor (2) and which is arranged on the second rail (3), characterized in that the at least one support (60) has a trough-shaped, outer bearing surface (66) on a solid, block-like limb (61), in which bearing surface one end of the spindle (5) rests in a stationary manner, the at least one support consisting of a cold-extruded part made from metal

Thus, as presently claimed, support (60) comprises a block-like element, having a trough-shaped outer bearing surface, a spindle resting in the outer bearing surface and the outer bearing surface thereby fixing the spindle to a rail. Further, each support comprises one single part, being cold-extruded and made from metal.

In contrast to the presently claimed subject matter, Taubmann et al. does not disclose, teach or suggest a “[d]rive for a seat adjusting device... with spindle... which is affixed to a first rail... by means of at least one support... *the at least one support has a trough-shaped, outer bearing surface on a solid, block-like limb, in which bearing surface...the spindle rests ...the at least one support consisting of a cold-extruded part made from metal*” (emphases added, element numbers redacted) as recited in independent claim 1. The Examiner has asserted that although “Taubmann fails to teach where the at least one support device has a trough-shaped outer support surface in which one end of the spindle is seated in a fixed manner,” “...the spindle’s attachment to the support device is merely an alternative method for fastening the elements together...the trough-shaped, outer bearing surface... is merely a gusset, for providing additional support. It is

well known in the art to provide gussets, to add stability to elements.” *See* page 3, lines 3-5 of the Office Action.

Applicants respectfully submit that the above discussion by the Examiner bypasses discussion of the feature that Taubmann et al. clearly lacks, of the shape (“trough-shaped, outer bearing surface on a... block-like limb”) of the support device, in favor of discussion of the attachment *to* the support device. However, the shape of the support *facilitates* the attachment to the support device. Further, Applicants respectfully submit that in further contrast to the claimed subject matter, Taubmann et al. fails to teach even a block-like limb attached to the support device.

Indeed, L-shaped punched and bent parts are precisely a problem disclosed in the original specification as intended to be addressed and solved by the claimed subject matter. In contrast, the non-desired punched and bent parts are disclosed in each of the Examiner cited prior art references. Indeed, Applicants note the similarities between Taubmann et al. Figure 1 and Figure 1 (labeled “Prior Art” at the Examiner’s suggestion) of the instant application. Accordingly, Taubmann et al. (and Isomura) shows L-shaped punched and bent parts, and not “block-like” parts. *See* Taubmann et al. elements 6a, 6b, seen in Figures 1, 2 and 10-17 (*see* also Isomura elements 124, seen in Figures 1 and 4). Further, such L-shaped punched and bent parts support connection of a rod or spindle in a through-hole or inner bearing surface only (*see* Taubmann et al. elements 65b, 67 and Isomura element 126), and not an “outer bearing surface” as claimed, and therefore further cannot be “trough-shaped” as claimed.

Applicants further respectfully note that *assuming arguendo* that Miyauchi and Mouri

teach “a gusset, for providing additional support” and “adding stability,” Miyauchi and Mouri would not be employed by a person having ordinary skill in the art, not only because the trough-shaped outer bearing surface is not used as a gusset, as discussed above, but also because Miyauchi and Mouri fail to teach, show or suggest the function of the support. In contrast to the claimed subject matter, element(s) 13 of Miyauchi and Mouri do not affix the spindle to the rail, and instead affixes a lower rail to the floor.

Accordingly, none of the cited references, whether taken alone or in combination with the understanding of a person having ordinary skill in the art teach, show or suggest a “[d]rive for a seat adjusting device... with spindle... which is affixed to a first rail... by means of at least one support... *the at least one support has a trough-shaped, outer bearing surface on a solid, block-like limb, in which bearing surface...the spindle rests ...the at least one support consisting of a cold-extruded part made from metal*” (emphases added, element numbers redacted) as recited in independent claim 1. As all of the features of the independent claim are not disclosed, taught or suggested by the cited references, the presently claimed subject matter is not rendered obvious by the cited references. Similarly, as the dependent claims necessarily recite all of the features of the independent claim from which they depend, the claims that depend from independent claim 1 are likewise asserted to be patentable over the cited references. Therefore, it is submitted that independent claim 1 and all the claims depending therefrom (claims 2-8, 10 and 11) are unobvious over the cited prior art of record, whether taken alone or in any combination.

It is therefore respectfully submitted that the rejections under 35 U.S.C. 103(a) should be withdrawn.

CONCLUSION

In light of the foregoing, Applicants submit that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicants respectfully request that the Examiner call the undersigned.

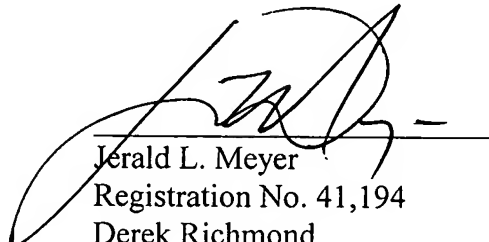
In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

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